IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-07-2005

CORAM

THE HONOURABLE MR JUSTICE P.K. MISRA

AND

THE HONOURABLE MR JUSTICE S. ASHOK KUMAR

WRIT PETITION NO.25137 OF 2004
AND
W.P.M.P.NO.30578 OF 2004

R.R. Gopal @ Nakkheeran Gopal ... Petitioner

Vs.

1. The Secretary
   Home Department
   Government of Tamil Nadu
   St. Fort George
   Chennai - 9.

2. The Deputy Superintendent of Police
   Head Quarters
   CBCID
   Chennai. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus as stated therein.

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For Petitioner : Mr. N. Natarajan,
Senior Counsel for
Mr. N.R. Elango

For Respondents : Mr. A.L. Somayaji
Additional Advocate General
Mr. N.C. Manishankar,
Special Public Prosecutor

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J U D G M E N T

P.K. MISRA, J

A preface is required to indicate the circumstances regarding the delay in delivery of the judgment. A few days after the matter was heard and judgment was reserved during the month of December, 2004, one of us, namely, Ashok Kumar, J. was required to hold Court at Madurai Bench of Madras High Court during January and February. Even though a draft judgment was prepared by my brother Ashok Kumar, J, there was no occasion to discuss the matter at any time. By the time the learned Judge completed his stint at Madurai, I had to attend the Court at Madurai for two months, i.e., till the end of April. In the meantime, the Special Public Prosecutor had been requested to furnish details of the cases which had been indicated in the counter affidavit. Subsequently, the Special Public Prosecutor furnished such details in the shape of a booklet. Then summer vacation intervened from 1st May to June 13th of 2005. Soon after re-opening, one of us, namely, Ashok Kumar, J had to undergo treatment for 2 to 3 weeks. In view of such unforeseen developments, my brother Justice Ashok Kumar, J could not finalise the draft and ultimately I had to redraft and finalise the judgment.

2. This writ petition has been filed for quashing the G.O.Ms.No.1262 Home (Pol VII), dated 24.12.2002 notifying the entire State of Tamil Nadu as the notified area for the purpose of Section 4(a) of the Prevention of Terrorism Act, 2002 (hereinafter referred to as "POTA" in short).

3. The impugned G.O., is to the following effect:-

HOME DEPARTMENT

SPECIFIED THE NOTIFIED AREA UNDER PREVENTION OF

TERRORISM ACT.

(G.O.Ms.No.1262, Home (Pol.VII),

24th December 2002)

No.II(1)/HO/76(a)/2002/

Under Explanation to section 4 of the Prevention of Terrorism Act, 2002 (Central Act 15 of 2002), the Governor of Tamil Nadu hereby specifies the whole of

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the State of Tamil Nadu as "notified area" for the purpose of section 4 of the said Act.

4. Bereft of all necessary details, the relevant averments made in the writ petition are to the following effect :-

The petitioner was arrested on 11.4.2003 at Chennai in connection with Cr.No.414/2001, on the file of the Inspector of Police, Sathyamangalam Police Station, Erode, for the alleged involvement on the offence under Section 302 r/w.109, 176, 202 and 201 r/w 302 IPC. When the petitioner was taken to CBCID Head Quarters at Chennai and a search was made, it was alleged that he was found with a bag containing unauthorised country made arm and ammunition and pamphlet. A case was registered under Section 124-A IPC and 25(1B)(a) of the Arms Act in Cr.No.1 of 2003 on the file of the Deputy Superintendent of Police, CBCID Head Quarters, Chennai. Later the case was transferred to the Deputy Superintendent of Police, CBCID, Coimbatore, for investigation. On 16.4.2003, Section 4(a) of the POTA was added and he was produced before the Special Court for POTA on 21.4.2003 and thereafter he was remanded to judicial custody. Even though in the writ petition several allegations have been made that the petitioner was falsely implicated because of the malafide attitude of the present Chief Minister and the police officials, it is not necessary to go into such allegations as at the time of hearing, the learned counsel for the petitioner has confined his challenge to the notification alone.

5. The main ground for challenge to the notification is to the effect that such a notification has been issued by the State Government without application of mind and without following the law declared by the Supreme Court in Kartar Singh's case (1994 SCC (Cri) 899) and Sanjay Dutt's case (1994 SCC (Cri) 433). It has been contended that the power of the State Government to notify any area as a notified area for the purpose of Section 4(a) of POTA must be based on the subjective satisfaction regarding the proneness of such area to terrorist and disruptive activities and without being satisfied about the factual basis, the entire State has been declared as the notified area without recording any satisfaction regarding the requirements. It has been stated that the State Government's power to notify an area must have relation to curbing terrorist and disruptive activities in the notified area as that is the intention of the Legislature and the declaration of the entire State as notified area without being satisfied about the proneness of the entire State to terrorist activities, amounts to non-application of mind.

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6. A counter affidavit sworn to by the Secretary of the Home Department has been filed on behalf of the State Government. In the counter affidavit, objection to the maintainability of the writ petition has been raised on several counts. It is not necessary to notice in detail such objection, as such objection is considered at a later point in the present judgment. The grounds relating to validity of the notification as raised by the petitioners have been refuted and it has been asserted that the notification has been issued on consideration of the relevant circumstances. In the counter affidavit it has been indicated that there are several terrorism organisations like LTTE, TNLA, TNRT and Al-Umma, which are active in various parts of Tamil Nadu and a list of 54 cases involving such organisations has been furnished in the counter affidavit and it has been stated that such list is illustrative and not exhaustive and the activities of these organisations spread all over the Tamil Nadu. It has been further indicated that after careful examination of the materials available, the State Government has arrived at a conclusion that it was necessary to notify the whole of Tamil Nadu as the "notified area". In the counter it was also indicated that the following terrorist organisations, which have been declared as terrorist organisations, are active in Tamil Nadu :-

i) Liberation Tigers of Tamil Eelam (LTTE) (Sl.No.21 to the Schedule)

ii) Communist Party of India (Marxist-Leninist) People's War (Sl.No.24)

iii) Maoist Communist Centre (MCC) (Sl.No.25)

iv) Tamil Nadu Liberation Army (TNLA) (Sl.No.30)

v) Tamil National Retrieval Troops (TNRT) (Sl.No.31)

It has been further indicated that the following organisations, namely, Tamil Nadu Liberation Army, Tamil National Retrieval Troops, Tamilar Viduthalai Iyakkam, Al-Umma and All India Jihad Committee have been banned by the State Government under the Criminal Law Amendment Act, 1908. It has been further indicated that only with a view to curb the terrorist activities in the State of Tamil Nadu, the notification was issued by keeping in view the principles declared in Kartar Singh's case. It is further indicated that intelligence reports were available to show that there are influx and availability within the State of "certain arms and

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ammunitions, which facilitate commission of terrorist activities. Hence, with a view to curb such activities and to maintain peace in the State, the whole of Tamil Nadu has been described as notified area for the purpose of Explanation to Section 4 of the said Act.

7. A preliminary contention has been raised by the respondents that the question raised in the present Writ Petition has been the subject matter of earlier proceedings and therefore, the matter should not be considered afresh. It has been stated that the brother of the petitioner had filed a Habeas Corpus Petition No.1269 of 2003. In the said Habeas Corpus Petition, the petitioner filed two Habeas Corpus Miscellaneous Petitions viz., 130 and 131 of 2003 to implead the Home Secretary and to raise additional ground questioning the action of the State Government declaring the whole Tamil Nadu as notified area. A Counter Affidavit was filed by the State Government explaining the position.

8. The High Court disposed of the Habeas Corpus Petition by directing release of the petitioner on the ground that there was violation of Article 22(1) of the Constitution of India. Against the order of the High Court, the State Government had preferred Special Leave Petitions viz., No. 5668 and 5669 of 2003. The said matters are still pending before the Supreme Court. In the aforesaid background, it is contended that when similar matters are pending before the Supreme Court, the petitioner cannot be permitted to agitate the very same subject in the High Court.

9. We are afraid the contention of the State Government cannot be upheld. Nothing has been indicated in the order passed by the High Court in Habeas Corpus Petition No.1269 of 2003 either upholding or nullifying the notification. It is no doubt true that the State Government has challenged the order of release before the Supreme Court. However, the matter has not been decided by the High Court in HCP No.1269 of 2003 in one way or the other. The mere fact that Special Leave Petitions filed by the State Government against the order passed in Habeas Corpus Petition is pending before the Supreme Court cannot be construed as a ground to negative the contention now raised.

10. The respondents have also indicated that apart from the Miscellaneous Petitions filed by the brother, the petitioner had filed a separate Writ Petition viz., W.P.No.33291 of 2004 seeking for a declaration that the Government Order NO.1262 Home (Pol.VII) dated 24.12.2002 was ultra vires and unconstitutional. However, such Writ Petition was dismissed as

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withdrawn at the stage of admission. It is contended by the respondents that in the absence of any leave to the petitioner to file any other Writ Petition on the same relief, the filing of the present Writ Petition is a case of abuse of process of this Court and is not maintainable.

11. The order passed in Writ Petition No.33291 is to the following effect:

> " Mr.Shanmughasundaram, learned senior counsel appearing for the writ petitioner, represents that this writ petition has been moved only to avoid technical objections. According to the learned counsel, the very contention has already been raised in HCP No.1269 of 2003 as an additional ground. Therefore, the learned senior counsel has advised to withdraw the second writ petition. The counsel on record has made an endorsement.
>
> 2. Recording the same, the above writ petition is dismissed as not pressed, while making it clear that the point already raised could always be urged by the petitioner in HCP 1269 of 2003. Consequently, W.P.M.P. No.40285 of 2003 is also dismissed."

12. It is obvious that the Writ Petition was dismissed as withdrawn on the footing that in the HCP No.1269 of 2003, the very same question had been raised as additional ground. The withdrawal of the Writ Petition No.33291 of 2003 under those circumstances cannot be considered as a bar for filing of a subsequent Writ Petition, particularly, when the question was raised in the HCP No.1269 of 2003, the pendency of which was indicated as the reason for withdrawal of the writ petition.

13. The next objection of the State Government relating to maintainability of the present Writ Petition is based on circumstances which transpired in the Supreme Court. The petitioner had filed Writ Petition (CRL) NO.56 of 2003 challenging the validity of the provisions containing Prevention of Terrorism Act 2002 (Central Act 15 of 2002). In the said Writ Petition, the petitioner had filed Crl. M.P.No.1435 of 2004 on 3.2.2004 challenging the very same notification 1262 dated 24.12.2004. The Writ Petition filed by the petitioner was taken up along with a batch of other Writ Petitions filed before the Supreme Court challenging the validity of the Act and the Supreme Court upheld the validity of the Act by Judgment dated 16.12.2003 as per the decision reported in 2004 (9) SCC 580. It is therefore, contended that the petitioner cannot be permitted

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to challenge the notification at this stage. The answer to the above technical objection raised by the State Government is contained in the Order passed by the Supreme Court in W.P.(CRL) No.56 of 2003. In the said order, the Supreme Court while observing the issue relating to the validity of the Act had already been decided in the Judgment reported in 2004 (9) SCC 580 went on to observe as follows:

> "On 24.12.2002, G.O.Ms.No.1262 Home (Pol.VII) was issued by the State of Tamil Nadu whereby the State Government specified the whole of the State of Tamil Nadu as notified area for the purpose of Section 4 of the said Act. Although this notification is dated 24.12.2002, challenge to the constitutional validity of this notification independently of the validity of the Act itself, was not raised in the petition. It is only after the delivery of the Judgment dated 16th December, 2003 an application seeking amendment in the writ petition has been filed on 3.2.2004 wherein the constitutional validity of the notification dated 24.12.2002 is sought to be put in issue.
>
> The constitutional validity of a notification issued under the Act is independent of the issue as to the constitutional validity of the Act itself. So far as the principal reliefs prayed for in the writ petition (reproduced hereinabove) are concerned, they do not survive for adjudication on merits in view of the decision of this Court dated 16th December, 2003 in Writ Petition (Civil) No. 389/2002 (People's Union for Civil Liberties & Anr. vs. Union of India) reported as 2004 (9) SCC 580. The petition, therefore, does not survive for adjudication. However, now by way of amendment in the main petition, the petitioner seeks to put in issue the constitutional validity of a State notification issued under the Central legislation. That remedy is available to the petitioner by filing an independent petition under Article 226 of the Constitution before the High Court. The prayer for amendment is refused, but reserving liberty to the petitioner to raise the same issue by filing a petition before the High court if so advised.

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In so far as the present writ petition is concerned, the same be treated as disposed of in view of the issue arising for decision being covered by the judgment of this Court dated 16th December, 2003 referred to hereinabove.

Though the petition stands disposed of, the interim order dated 16.6.2003 passed by this Court shall continue to remain in operation for a period of six weeks from today."

14. From the aforesaid order, it is also clear that even though, a specific question now raised was sought to be raised by the petitioner by way of an amendment, the Supreme Court specifically observed that the remedy is available to the petitioner by filing an independent Writ Petition under Article 226 of the Constitution of India before the High Court and the Supreme Court granted liberty to the petitioner to raise the issue by filing Writ Petition in the High Court. In view of the above, the contention raised by the respondents that the present Writ Petition challenging the validity of the notification is not maintainable in the eye of law cannot be accepted.

15. Before proceeding to consider the submissions made by the counsel for the petitioner and the counsel for the respondents regarding the validity of the notification, it is necessary to notice in brief the scheme of POTA and the relevant provisions, and the link between such provisions and the similar provisions contained in TADA, which was admittedly similar to POTA in several respects.

16. Under Section 1, the Act extends to whole of India. Under Section 1(6), the Act is deemed to have come into force on the 24th day of October, 2001 and shall remain in force for a period of three years from the date of its commencement.

Chapter II of the Act deals with the punishment for, and measures for dealing with, terrorist activities. Sections 3,4 and 5 provide for punishment in respect of different offences. Section 3(1) describes what is a terrorist act in these terms Sections :-

"3. Punishment for terrorist acts.-
(1) Whoever,-

(a) with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does not any act or thing by using bombs, dynamite or other

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explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act;

(b) is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or cause significant damage to any property,

commits a terrorist act.

Explanation.- For the purposes of this sub-section, "a terrorist act" shall include the act of raising funds intended for the purpose of terrorism."

3(2) provide for punishment in respect of a person who commits a terrorist act. Similarly Section 3(3) provides for punishment in respect of a person who conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of a terrorist act or any act preparatory to a terrorist act. Section 3(4) provides for punishment to a person who voluntarily harbours or conceals, or attempts to harbour or conceal, any person knowing that such person is a terrorist. Section 3(5) provides for punishment to any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist acts. Section 3(6) provides for punishment to any person whoever knowingly holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds. Section 3(7)

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provides punishment for a person who threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness or does any other unlawful act with the said intent.

Since the validity of notification issued under Section 4 has been challenged, it is appropriate to extract such provision in extenso :-

> "4. Possession of certain unauthorised arms, etc.- Where any person is in unauthorised possession of any-
>
> (a) arms or ammunition specified in columns (2) and (3) of Category I or Category III (a) of Schedule I to the Arms Rules, 1962, in a notified area,
>
> (b) bombs, dynamite or hazardous explosive substances or other lethal weapons capable of mass destruction or biological or chemical substances of warfare in any area, whether notified or not,
>
> he shall be guilty of terrorist act notwithstanding anything contained in any other law for the time being in force, and be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.
>
> Explanation.- In this section, "notified area" means such area as the State Government may, by notification in the Official Gazette, specify."

It is thus apparent that section 4 consists of two parts. Section 4(a) relate to possession of arms or ammunition specified in columns (2) and (3) of Category I or Category III (a) of Schedule 1 to the Arms Rules, 1962, in a notified area. Section 4(b) relates to unauthorised possession of any bombs, dynamite or hazardous explosive substances or other lethal weapons capable of mass destruction or biological or chemical substances of warfare in any area, whether notified or not.

Section 5 provides for enhanced penalties to any person who with intent to aid any terrorist contravenes any provision of, or any rule made under the Explosive Act, 1884, the Explosive Substances Act, 1908 the Inflammable Substances Act, 1952, or the Arms Act,1959.

A perusal of these provisions make it clear that except Section 4(a), all other penal provisions are applicable as such

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to the entire India. It is only in respect of offences punishable under Section 4(a), the unauthorised possession of arms or ammunition specified in columns (2) and (3) of Category I or Category III(a) of Schedule 1 to the Arms Rules, 1962, become punishable, if such unauthorised possession is in a notified area. As per the explanation, "notified area" means such area as the State Government may, by notification in the Official Gazette, specify.

17. At this stage it is appropriate to notice similar provision contained in the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as TADA Act). Section 5 of the TADA Act is extracted hereunder :-

> "5. Possession of certain unauthorised arms, etc. in specified areas.- Where any person is in possession of any arms and ammunition specified in columns 2 and 3 of Category I or Category III(a) of Schedule I to the Arms Rules, 1962, no bombs, dynamite or other explosive substances unauthorisedly in a notified area, he shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine."
>
> Section 2(1)(f) of TADA Act provides :-
>
> "notified area" means such area as the State Government may, by notification in the Official Gazette, specify;

The provisions contained in Section 4(a) and 4(b) are similar to the provisions contained in Section 5 of the TADA Act, 1987, save and except an important departure. So far as TADA Act was concerned, unauthorised possession of arms or ammunition or particular category of weapons was an offence under TADA Act only in the notified area, whereas, under the present Act, possession of inherently more dangerous weapons like bombs, dynamite or hazardous explosive substances or other lethal weapons capable of mass destruction or biological or chemical substances of warfare, are punishable as such, whether the place where the person is in possession is a notified area or not. In other words, in respect of the more dangerous weapons, the Act itself has made it punishable. Only if a notification is issued, possession of arms or ammunition specified in Columns (2) and (3) of Category I or Category III (a) of Schedule I to the Arms Rules, 1962, would become punishable under Prevention of Terrorism Act, 2002.

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18. The arms and ammunition as included in Section 4 (a) are relatable to the relevant provisions in Schedule I under Rule 3 of Arms Rules, 1962. The relevant portion are extracted hereunder :-

SCHEDULE I

Category	Arms	Ammunition
1(a)	Prohibited arms as defined in Section 2(1)(i) and such other arms as the Central Government may, by notification in the Official Gazette specify to be prohibited arms.	Prohibited ammunition as defined in section 2 (1)(h) and such other articles as the Central Government may be notification in the Official Gazette specify to be prohibited ammunition.
(b)	Semi-automatic fire-arms, other than those included in categories 1(c) and III(a), smoothbore guns having barrel of less than 29" in length.	Ammunition for arms of category 1(b).
(c)	Bolt action or semi-automatic rifles of "303" or 7.62 mm. bore or any other bore which can chamber and fire service ammunition of "303" or 7.62 mm,calibre; muskets, of 410 "bore or any bore which can fire 410" musket ammunition; pistols, revolvers or carbines of any bore which can chamber and fire "380" or "455" rimmed cartridges or service 9 mm, or "45" rimbles cartridges.	Ammunition for fire-arms of category I (c).
(d)	Accessories for any fire-arms designed or adapted to diminish the notice or flash caused by the firing thereof.	Nil

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Category	Arms	Ammunition
III	Fire-arms other than those in categories I, II, and IV, namely :-	Ammunition for fire-arms other than those in categories, I, II and IV, namely :-
	(a) Revolvers and pistols	Ammunition for fire-arms of category III (a).

Section 2(1)(i) of the Arms Act, 1959 defines "prohibited arms" means-

> (i) firearms so designed or adapted that, if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty, or
>
> (ii) weapons of any description designed or adapted for the discharge of any noxious liquid, gas or other such thing,
>
> and includes artillery, anti-aircraft and anti-tank firearms and such other arms as the Central Government may, by notification in the Official Gazette, specify to be prohibited arms.

19. The provision contained in Section 4(a) being similar to the provisions contained in Section 2(1)(f) and Section 5 of TADA Act, the observations made by the Supreme Court in Sanjay Dutt's case in connection with the ambit of TADA Act are applicable with equal vigour while considering the question as to whether notification as contemplated in Section 4(a) issued by the State Government is valid or not. As it was emphasised by the Supreme Court in the said case, such power is to be exercised by the State Government by reading the enactment as a whole keeping in view the object and also keeping in view the fact that inherently more dangerous weapons are already covered under Section 4(b). The State Government is to notify a specified area for the aforesaid purpose with reference to Terrorist Activities therein to check the influx into, and availability within the notified area of the specified arms and ammunition. The State Government is also required to keep in view the more lethal and hazardous weapons are already covered under Section 4(b). Therefore, the emphasis of the Supreme Court regarding the area which is more prone to terrorist

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activities, assumes more significance in the context of the present Act.

20. In paragraphs 21 and 24 of the Sanjay Dutt's case reported in 1994 Supreme Court Cases (Cri)433, the Supreme Court has observed :-

> "21. Section 2(1)(f) defines "notified" to mean such area as the State Government may, by notification in the Official Gazette, specify. There is no express indication in the Act of the manner in which the State Government is to exercise this power of issuing the notification. It is rightly urged by the learned Additional Solicitor General that the manner in which this power is to be exercised by the State Government has to be inferred by reading the enactment as a whole keeping in view its object, from which it follows by necessary implication. He submits that the indication is, that the State Government is to notify a specified area for this purpose with reference to the extent of terrorist and disruptive activities therein with a view to check the influx into, and availability within the notified area of the specified arms and ammunition etc., which by their inherent nature are lethal and hazardous and, therefore, facilitate commission of terrorist and disruptive activities. He submits that the unauthorised possession of arms and ammunition etc., of the specified category facilitates the commission of terrorist and disruptive activities and, therefore, an area which is more prone to such activities is notified with a view to prevent the availability of unauthorised weapons and substances of this kind in that area. Learned Additional Solicitor General submitted that it is because of this fact of greater proneness of a notified area to the commission of terrorist and disruptive activities that mere unauthorised possession of the specified arms etc., therein is make a statutory offence of strict liability. This is the basis of his contention that a conviction under Section 5 of the TADA Act must follow on proof by the prosecution of conscious `possession', `unauthorisedly', of any of the specified arms and ammunition etc., in a "notified area". We think the submissions of the learned Additional Solicitor General that the State Government's power to notify an area under Section 2 (1)(f) must have relation to curbing terrorist and disruptive activities in the notified area is well founded for otherwise the State Government's power

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would be unfettered and unguided which would render Section 5 vulnerable.

...

24. We have already indicated the manner in, and the purpose for which, a specified area is declared to be a notified area by the State Government under Section 2(1)(f) of the TADA Act. This is done with reference to the fact that a notified area is treated to be more prone to the commission and escalation of terrorist and disruptive activities. This is the basis for classification of "a notified area" differently from the non-notified areas and it has a reasonable nexus with the object of classification. Such activities must, therefore, have a bearing on the constitution of any special offence confined to that area. Declaration of a specified area as a notified area by the State Government is based on its satisfaction, subjective in nature that the area is prone to terrorist and disruptive activities and its escalation. This opinion of the State Government has to be formed necessarily with reference to facts relating to incidents of terrorist and disruptive activities, for the prevention of which check on the influx of the specified arms and ammunition etc., in that area, is the object of enacting Section 5. The existence of the factual basis for declaring a specified area as notified area has to be presumed for the purpose of Section 5 for otherwise it would be put to proof in every case. This is the true significance of the third ingredient of the offence under Section 5."

(Emphasis added)

21. After relying upon the aforesaid observations made by the Supreme Court and particularly on the emphasised portions, the learned Senior Counsel appearing for the petitioner has contended that in the present case, notification has been mechanically issued notifying the entire State without keeping in view the object of Section 4(a) of POTA and completely oblivious of the fact that possession of inherently more dangerous and lethal weapons as described in Section 4(b) is punishable as such in any part of the country, including the entire State of Tamil Nadu, bereft of any notification. He has therefore submitted that the State Government should have formed necessary opinion with a view to check the influx of "specified arms and ammunitions" which in the present context would mean the arms and ammunitions as coming within the Category I and Category III of Schedule-I to the Arms Rules, 1962. He has therefore submitted that since the notification is based on the materials which are mostly irrelevant and have no nexus to

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achieve the object of Section 4(a) of POTA, the notification should be quashed.

22. Learned Additional Advocate General, Mr.A.L.Somayaji, appearing for the State contended that the issuance of the notification notifying the entire State is on the basis of the subjective satisfaction of the State, the High Court is not expected to review the basis of such subjective satisfaction as if it were sitting as an appellate authority.

23. In INDRA SAWHEY ETC., v. UNION OF INDIA AND OTHERS (1993 SC 477), the leading judgment of majority of Judges delivered by Justice Mr. B.P.JEEVAN REDDY on behalf of himself and on behalf of KANIA, C.J., M.N.VENKATACHALIAH, S.RATNAVEL PANDIAN, A.M.AHMADI, and P.B.SAWANT, J.J., while considering the inclusion of a particular community as Backward Community on the basis of a report furnished by the Commission, the Supreme Court cited with approval the observation of the Supreme Court in earlier decision in 1972 (1)SC 1375, which reads as under:-

> "... In spite of best efforts that any commission may make in collecting materials and datas, its conclusions cannot be always scientifically accurate in such matters. Therefore, the proper approach, in our opinion should be to see whether the relevant data and materials referred to in the report of the commission justify its conclusions. In our opinion, there was sufficient material to enable the commission to be satisfied that the persons included in the list are really socially and educationally backward..." (Emphasis added)

While considering the question of adequacy of representation in the services under the State Government, the Supreme Court, in the said case further observed that:-

> "89. Not only should a class be a backward class for meriting reservations, it should also be inadequately represented in the services under the State. The language of clause (4) makes it clear that the question whether a backward class of citizens is not adequately represented in the services under the State is a matter within the subjective satisfaction of the State. This is evident from the fact that the said requirement is preceded by the words"in the opinion of the State". This opinion can be formed by the State on its own, i.e., on the basis of the material it

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has in its possession already or it may gather such material through a Commission/Committee, person or authority. All that is required is, there must be some material upon which the opinion is formed. Indeed, in this matter the Court should show due deference to the opinion of the State, which in the present context means the executive. The executive is supposed to know the existing conditions in the society, drawn as it is from among the representatives of the people in Parliament/Legislature. It does not, however, mean that the opinion formed is beyond judicial scrutiny altogether. The scope and reach of judicial scrutiny in matters within subjective satisfaction of the executive are well and extensively stated in Barium Chemicals v. Company Law Board (AIR 1967 SC 295) which need not be repeated here. Suffice it to mention that the said principles apply equally in the case of a constitutional provision like Article 16(4) which expressly places the particular fact (inadequate representation) within the subjective judgment of the State/executive."

(Emphasis added)

24. The case of the Barium Chemicals v. Company Law Board (AIR 1967 SC 295) was specifically cited with approval in the aforesaid decision of the Supreme Court. In the said decision, Justice J.M. Shelat, speaking for the majority view, had observed :-

> "... Though an order passed in exercise of power under a statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of mala fides, dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the powers, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts."

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It was further observed :-

> "64. ... There is no doubt that the formation of opinion by the Central Government is a purely subjective process. There can also be no doubt that since the legislature has provided for the opinion of the government and not of the court such an opinion is not subject to a challenge on the ground of propriety, reasonableness or sufficiency. But the Authority is required to arrive at such an opinion from circumstances suggesting what is set out in sub-clauses (i), (ii) or (iii). If these circumstances were not to exist, can the government still say that in its opinion they exist or can the Government say the same thing where the circumstances relevant to the clause do not exist? The legislature no doubt has used the expression "circumstances suggesting". But that expression means that the circumstances need not be such as would conclusively establish an intent to defraud or a fraudulent or illegal purpose. The proof of such an intent or purpose is still to be adduced through an investigation. But the expression "circumstances suggesting" cannot support the construction that even the existence of circumstances is a matter of subjective opinion. That expression points out that there must exist circumstances from which the Authority forms an opinion that they are suggestive of the crucial matters set out in the three sub-clauses. It is hard to contemplate that the legislature could have left to the subjective process both the formation of opinion and also the existence of circumstances on which it is to be founded. It is also not reasonable to say that the clause permitted the Authority to say that it has formed the opinion on circumstances which in its opinion exist and which in its opinion suggest an intent to defraud or a fraudulent or unlawful purpose. It is equally unreasonable to think that the legislature could have abandoned even the small safeguard of requiring the opinion to be founded on existent circumstances which suggest the things for which an investigation can be ordered and left the opinion and even the existence of circumstances from which it is to be formed to a subjective process."

Justice Hidayatullah, who had agreed with the majority view, had observed :-

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"27. These grounds limit the jurisdiction of the Central Government. No jurisdiction, outside the section which empowers the initiation of investigation, can be exercised. An action, not based on circumstances suggesting an inference of the enumerated kind will not be valid. In other words, the enumeration of the inferences which may be drawn from the circumstances, postulates the absence of a general discretion to go on a fishing expedition to find evidence. No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section exists, the action might be exposed to interference unless the existence of the circumstances is made out. As my brother Shelat has put it trenchantly:

> "It is not reasonable to say that the clause permitted the Government to say that it has formed the opinion on circumstances which it thinks exist."

Since the existence of "circumstances" is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least prima facie. t is not sufficient to assert that the circumstances exist and give no clue to what whey are because the circumstances must be such as to lead to conclusions of certain definiteness. The conclusions must relate to an intent to defraud, a fraudulent or unlawful purpose, fraud or misconduct or the withholding of information of a particular kind. We have to see whether the Chairman in his affidavit has shown the existence of circumstances leading to such tentative conclusions. If he has, his action cannot be questioned because the inference is to be drawn subjectively and even if this Court would not have drawn a similar inference that fact would be irrelevant. But if the circumstances pointed out are such that no inference of the kind stated in Section 237(b) can at all be drawn the action would be ultra vires the Act and void."

(Emphasis added)

25. In First Land Acquisition Collector and others v. Nirodhi Prakash Gangoli and antoher (AIR 2002 SC 1314), while considering the question of invocation of urgency clause under

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Section 17(4) of the Land Acquisition Act (1 of 1894), it was observed that:

> "4. The question of urgency of an acquisition under Section 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the Court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. In this view of the matter when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers under Section 17(1) and (4) of the Act, and issues notification accordingly, the same should not be interfered with by the Court unless the Court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision has been taken by the appropriate authority mala fide. Whether in a given situation there existed urgency or not is left to the discretion and decision of the concerned authorities. If an order invoking power under section 17(4) is assailed, the Courts may enquire whether the appropriate authority had all the relevant materials before it or whether the order has been passed by non-application of mind..."
>
> (Emphasis added)

26. In M.A.Rasheed and others v. The State of Kerala (AIR 1974 SC 2249), while considering the validity of the Government Notification prohibiting extraction of fibre from coconut husks by machinery only in three out of eleven Districts in Kerala, the Supreme Court observed that:-

> "9. Administrative decisions in exercise of powers even if conferred in subjective terms are to be made in good faith on relevant consideration. The courts inquire whether a reasonable man could have come to the decision in question without misdirecting himself on the law or the facts in a material respect. The standard of reasonableness to which the administrative body is required to conform may range from the Courts' own opinion of what is reasonable to the criterion of what a reasonable body might have decided. The courts will find out whether

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conditions precedent to the formation of the opinion have a factual basis.

10. In Rohtas Industries Ltd. v. S.D.Agarwala (1969) 3 SCR 108=(AIR 1969 SC 707) an order under Section 237 (b)(i) and (ii) of the Companies Act for investigation of the affairs of the company was challenged on the ground that though the opinion of the Government is subjective, the existence of the circumstances is a condition precedent to the formation of the opinion. It was contended that the Court was not precluded from going behind the recitals of the existence of such circumstances in the order, but could determine whether the circumstances did in fact exist. This Court said that if the opinion of an administrative agency is the condition precedent to the exercise of the power, the relevant matter is the opinion of the agency and not the grounds on which the opinion is founded. If it is established that there were no materials at all upon which the authority could form the requisite opinion, the Court may infer that the authority passed the order without applying its mind. The opinion is displaced as a relevant opinion if it could not be formed by any sensible person on the material before him."

27. A perusal of the aforesaid decisions makes it clear that when an action has been taken by an executive authority on the basis of subjective satisfaction, Courts do not sit as appellate authorities over such decision or order of the executive authority and they are not expected to substitute their own views for that of the executive authorities. Merely because the Courts have a different opinion, they cannot interfere with the order of the executive. However, it cannot be stated that Courts are entirely powerless to consider the question. The Courts can delve into question to find out whether the conclusion or action of the executive authority is based on consideration of relevant circumstances or based on irrelevant circumstances. If it is found that the conclusion or the action is based on consideration of irrelevant circumstances or there is non-application of mind, the Courts can interfere by keeping in view the well accepted principles. The question raised in the present Writ Petition is required to be considered in the light of the aforesaid legal position.

28. In the counter affidavit, the State Government has given reference to several cases involving terrorist

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organisations such as LTTE, TNLA, TNRT and Al-Umma. The details as furnished in paragraph 7 of the counter affidavit are as follows :-

" 1)Planted a bomb TVS Bus Stop, Anna Salai, Chennai.

2) Explosives seized at No.13, 5th Street, V.O.C. Nagar, Pulianthope, Chennai.

3) Mailing a parcel bomb to Tr.E.Ma.Masanamuthu, DCP(HQrs), Chenani-8.

4)Shoot-out and assassination of EPRLF leader K.Padmanabha and 12 others including 12 civilians armed with automatic weapons at Kodambakkam, Chennai.

5) Throwing a bomb into the house of film Director Manirathinam in a bid to kill him at Teynampet, Chennai.

6) Bomb blast at Sri Lankan High Commission Office, Chennai.

7) Planting of bombs at Police and Prison establishments.

8) Planting of bombs at Victoria Students Hostel, Triplicane, Chennai.

9) Planting of bombs at Chennai City Police Office.

10) Seizure of explosive at Maroof Sahib Street, Anna Salai, Chennai.

11) Attempt to blast Nehru Statute at Kathipara.

12) Assassination of Former Prime Minister Tr. Rajiv Gandhi at Sriperumbudur,

13) Bomb attack at Perani Railway Station.

14) Blast at Villupuram Gandhi Statute.

15) Blast at Marudhaiyaru Railway Bridge.

16) Blast at Kallagam Railway Station.

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17) Police Station attack at Kallakurichi.

18) Bomb blast on the railway track near Cuddalore Old town.

19) Escape of 43 inmates from Tippu Mahal, Special Camp at Vellore.

20) Bomb blast at Tamil Nadu Congress Committee Office to causing damage to a portion of the office at Attur, Salem.

21) 440 KV Power tower blast at Parapallam.

22) Planting of bombs at Variety Hall Road Police Quarters.

23) One Krishnasamy (Teacher) was murdered.

24) One Thucka Ram was murdered.

25) Murder of one Kottai Ammer, a Muslim Liberal.

26) Violence, which broke out, sequel to the murder of a Traffic Police Constable Selvaraj.

27) Explosion at Marudam Complex in Udumalpet killing 3 women.

28) Murder of a Hindu Munnani functionary/one Veera Ganesh.

29) Kannada Matinee Idol Dr.Rajkumar and 3 others were abducted at Dodakajanur Farm House.

30) Attack of Vellithiruppur Police Station associated with Sandalwood smuggler Veerappan gang.

31) Blast at Ooty Botanical Garden.

32) Planting of bombs at Police club at Trichy.

33) Throwing of a bomb on Murali, Inspector of Police, Trichy.

34) Murdering of Dr. Sridhar, BJP, Trichy.

35) Attack on Andimadam Police Station.

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36) Arrest of TNRT cadre for possession of pistol with live rounds and a cyanide capsule. Also electrical and electronic goods worth to Rs.5 lakhs intended to be smuggled to Sri Lanka was seized.

37) Blast at Kudamurti Bridge.

38) Blast at Kumbakonam TV Centre.

39) Explosion at Mohamadir Rice Mill, Saliamangalam killing 4 inmates.

40) Bomb blast at Prawn Farm Kheezhaiyur, Nagapattinam..

41) Bomb blast at Uluthukuppai TV Relay Station.

42) Blast at Kodovasal congree office.

43) Murdering of Jayaprakash, Dy. Jailor in the Central Prison, Madurai.

44) Murdering ABVP State President, Mathichiyam, Madurai.

45) Rajapalayam, Jawahar Thidal, Alangularm Pon Elangovan aided LTTE and conducted a public meeting in favour of LTTE.

46) Blast at Kodaikanal TV Station.

47) Tamil Youths under the leadership of Ravichandran @ Ravi of Aruppukottai gone to Srilanka and undergone arms training imparted by LTTE at Jaffna and formed an organisation by name "Tamil National Retrieval Troop" (TNRT) and returned to Tamil Nadu clandestinely by LTTE boat.

48) Arumugam, Hindu Front activist was hacked to death.

49) One Balu @ Ganesan of Srilanka a former Militant of LTTE murdered one Balraj of Dhanuskodi and took away Rs.50/=.

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50) One Bosco of Jaffna, 2. Regan of Mullaitheevu and 3. Rabin of Kottai Mannar were designing to cause damage to Government properties and were also not having any valid document to prove their legal entry to India.

51) Shoot-out incident at Pattinamkathan Check Post by LTTE.

52) One Achuthan of Jaffna member of LTTE was found in possession of three video cassettes, LTTE propaganda literature PAWAN paper and was not having Visa or Passport.

53) Murdering of Madasamy, Pathamadai of RSS.

54) Bomb blast on the electricity distribution circle, Thoothugudi."

29. It is rather unfortunate that in the counter affidavit the State Government has merely recounted the incidents without disclosing the nature of allegations, specific offences committed or even the dates of the incidents or any other details. After the matter was heard and judgment was reserved, at a subsequent stage, the Special Public Prosecutor representing the State was requested to furnish details of the cases. Accordingly, the Special Public Prosecutor has furnished the details of 54 cases, which had been indicated in the counter affidavit, in the shape of a booklet. However, Serial Numbers indicated in the booklet are not according to the Item Numbers as described in the counter affidavit and it has been a Herculean task to co-relate 54 incidents given in the counter affidavit to the 54 cases, furnished in the subsequent booklet.

30. Be that as it may, it is now required to consider whether it can be said that the notification issued by the State Government declaring the entire State as the notified area for the purpose of Section 4(a) of POTA was based on consideration of relevant circumstances or there was non-application of mind. It is more convenient to refer to various cases as per the booklet as those cases have been chronologically serialised in such booklet.

31. Serial No.1 of the Booklet, which relates to item No.37 of the counter affidavit described as "Blast at Kudamuruti bridge", is an incident dated 29.1.86, occurred at Thiruvaiyar. A case was registered in Tiruvaiyaru P.S. Cr.No.53/86 under Section 3 of the Explosive Substances Act and Section 427 IPC on the allegation that there was explosion in the Bridge on the

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River Kodamuruti between Thanjavur and Tiruvaiyaru. The motive was to disturb the convoy of the Prime Minister of India on 31.1.1986 to attend a South Indian Cultural function. The incident related to the period more than 16 years before the notification. Nothing has been indicated that there has been any livelink between the incident and any subsequent terrorism act.

Serial No.2 of such booklet refers to incident dated 15.3.1987 which relates to bomb blast on a railway track between Ariyalur and Sillakudi Railway Stations. This incident which is referred to as Item No.15 of the counter affidavit as "Blast at Marudhaiyaru Railway Bridge" relates to a period more than 15 years before the issuance of notification.

Serial No.3 of the booklet is dated 23.1.1988, wherein the accused, supposedly a LTTE member, caused the death of the deceased by attacking with aruval. The case was acquitted under Section 248(1) Cr.P.C. in S.C.No.183/89 dated 14.12.1989. This incident is relating to Item No.49 of the counter affidavit wherein it has been described as "One Balu @ Ganesan of Srilanka a former Militant of LTTE murdered one Balraj of Dhanuskodi and took away Rs.50/-. Incidentally it may be pointed out that aruval is not a weapon which is not considered as a contraband arm either under POTA or its predecessor TADA Act. It is not understood as to how this individual act against another person, where the death was caused by aruval, can at all be said to be an act of terrorism necessitating a notification under Section 4 (a) with a view to curb possession of contraband arms.

Serial No.4 of the booklet relates to an incident dated 11.4.1988 wherein there was a bomb blast at T.V. Relay Centre in Kodaikanal causing damage to the compound wall and window pan of the T.V relay centre causing instantaneous death of accused Maran. The incident had taken place about 15 years before. This incident is referred to as item No.46 of the counter as "Blast at Kodaikanal TV Station".

Serial No.5 of the booklet relates to incident dated 17.4.1988, wherein a case has been registered under Section 14 of Foreigners Act, 1946 r/w.7 of the Foreigners Order, 1948 and 7(1)(a) of Criminal Law Amendment Act. The case ended in acquittal under Section 321 Cr.P.C on 30.12.1988. In other words, the case was withdrawn. Apart from the fact that the case related to 15 years prior to notification, there is no connection with the case and any act of terrorism. Merely because a person belonging to Srilanka was found in India without authority, it cannot be assumed that there is any act of terrorism. This incident relates to item No.52 of the counter.

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Serial No.6 of the booklet relates to incident dated 18.5.1988 where a time bomb was planted at Government Botanical Garden, Ooty. This was an incident to show protest against Hindi in support of separate Tamil Nadu. A case was registered under Sections 120-B, 153-B IPC and Sections 3,4 and 5 of the Explosives Substances Act. This incident, which has been indicated as Item No.31 of the counter, relates to a period more than 14½ years before the impugned notification.

Serial No.7 of the booklet relates to unauthorised entry of three accused persons to India without passport and the prosecution was under Section 6(A) of the India Passport Act, but the case was withdrawn on 4.3.1992. This incident, indicated as item No.50 of the counter, relates to a period more than 14 years before notification and apparently there is nothing to indicate any "act of terrorism". At any rate, the allegations do not indicate use of any contraband weapons.

Serial No.8 of the booklet relates to incident dated 19.6.1990, where there was a shoot-out at Pattinamkathan. A case was registered under Sections 147, 148, 307, 302 IPC r/w.120(B) IPC and Section 3(2) of TADA Act. But ultimately the designated Court acquitted all the accused and such decision was confirmed by the Supreme Court on 11.2.1999. This incident, which is described as Item No.51 of the counter, relates to a period more than 12 years prior to the notification.

Serial No.9 of the booklet relates to an incident dated 19.6.1990 at Kodambakkam, wherein Padmanabha, EPRLF and 14 others belonging to such organisation were killed by LTTE militants. Out of 26 accused, 18 could be apprehended. Accused 1 and 9 were convicted under Section 3(3) of TADA Act and Section 3(1) of TADA Act respectively. Accused No.9 was ultimately acquitted by the Supreme Court. It is evident that the incident was an internecine battle between two rival organisations. This incident reflected at Item No.4 in the counter has taken place more than 12 years prior to the notification.

Serial No.10 of the booklet relates to incident dated 21.5.1991, wherein the former Prime Minister Rajiv Gandhi was assassinated by suicide bomb blast. Even though many of the accused persons belonging to LTTE and TNRT were convicted under several charges, the Supreme Court, however, set aside the conviction under TADA Act on the footing that the incident was not an act of terrorism, but an organised act of revenge. Once the Apex Court of India found that the incident did not involve any "act of terrorism", it is difficult to understand as to how the State Government came to a different conclusion by relying

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upon the very same incident as an act of terrorism. Moreover, such incident described as Item No.12 of the counter had occurred 11½ years prior to the notification.

Serial No.11 of the booklet, which relates to Item No.47 of the counter, relates to incident dated 19.10.1991 where a group of Tamilians had gone to Srilanka for arms training imparted by LTTE, formed an organisation by name Tamil Nadu Retrival Troops (TNRT) and returned to Tamilnadu in a clandestine manner. In the criminal case, 4 out of 20 faced trial were convicted and others were acquitted. The incident related to period more than 11 years before.

Serial No.12 of the booklet, which is same as Item No.38 of the counter, relates to incident dated 24.5.1992 wherein a case had been registered under Sections 147, 149, 427 and 120(B) IPC, Section 3 of the Explosives Substances Act and Section 4 of TNPPD Act 1984 and Section 13(2) of Unlawful Activities (Prevention) Act, 1967. This incident is more than a decade old.

Serial No.13 of the booklet which is same as Item No.16 of the counter relates to incident dated dated 24.10.1992 wherein an explosion had occurred on the Railway Bridge and a case was registered under Sections 120 IPC, r/w.3(2), 3(3), 4(1) and 5 of TADA Act, Sections 3 and 5 of the Explosive Substances Act, Section 4(1) of TNPPD Act 1984 & Section 150 of Indian Railways Act. The case is still pending. However, the incident related to a period more than a decade back.

Serial Nos.14, 15 and 16 of the booklet, which are relatable to Item Nos.14, 20 and 42 respectively of the counter, relate to incidents of bomb blast on the same day, i.e., 25.1.1993, in three different places in Villupuram, Salem and Tiruvarur districts. These incidents had been clubbed together and are pending trial under Sections 120-B IPC and Sections 3 (1), (3), 4(1) and 5 of TADA Act and Section 5 of the Explosive Substances Act. These incidents had occurred almost a decade prior to the date of notification.

Serial No.17 of the booklet, which possibly relate to Item No.17 of the counter, is an incident dated 18.11.1993, where two persons belonging to TNLA threw bomb into police station. This incident had taken place more than 9 years back before the date of notification.

Serial No.18 of the booklet, which relates to Item No.25 of the counter, is a case registered under Section 302 IPC. The incident is dated 18.3.1994. Even though involvement

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of members of Al-Umma is indicated, nothing has been indicated regarding any "act of terrorism" or even with regard to nature of weapons.

Serial No.19 of the booklet, which possibly relates to Item No.40 of the counter, relates to bomb blast at a prawn farm in Nagapattinam District. A case was registered under Sections 120-B, 124(a), 147, 449, 324, 427, 506(ii) IPC, Section 3(1) of TNPPD Act and Section 3 of the Explosive Substances Act. The incident had occurred nine years prior to the notification.

Serial No.20 of the booklet, which relates to Item No.5 of the counter, relate to incident dated 10.7.1995 wherein 4 accused suspected to be the members of Al-Umma threw bomb into the house of famous film Director Manirathinam, who had directed film Bombay. A case has been registered under Section 307 IPC and Sections 3 & 5 of the Explosive Substances Act and Section 25(1)(b) of the Arms Act. However, nothing is there to indicate the "act of terrorism".

Serial No.21 of the booklet, which relates to item No.19 of the counter relates to incident dated 14.8.1995, where many suspected LTTE militants escaped from Vellore prison. A case was registered under sections 224, 225(B) IPC. There is nothing to indicate any nexus to any contraband weapons, even though the accused were members of LTTE.

Serial No.22 of the booklet, which relatable to Item No.6 of the counter, relate to incident dated 11.9.1995 where country made pipe bombs were exploded in the office of the Deputy High Commission for Sri Lanka Office in Chennai. A case was registered under Sections 336, 385, 286, 427 IPC r/w.3 of the Explosive Substances Act, 1908. However, two accused persons were acquitted on 25.3.1999.

Serial No.23 of the booklet, relatable to Item No.21 of the counter, relates to incident dated 20.9.1995 where the accused persons, suspected to be the members of TNLA, had planted bombs in the Power Transmission Line at Paraipallam village in Dharmapuri district. A case was registered under Section 4 of TNPPD Act r/w. Section 3 of the Explosive Substances Act.

Serial No.24 of the booklet, which relates to Item No.36 of the counter, is a case dated 17.4.1996 registered under Sections 7 and 25(c) of the Arms Act, Section 13 of Unlawful Activities (Prevention) Act and Section 3 r/w.12(1)(C) of the Passport Act alleging involvement of 8 accused persons, suspected to be members of TNRT. They are found in possession

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of pistol with live rounds and a cyanide capsule and also electrical & electronic goods worth Rs.5 lakhs intended for smuggling to Srilanka.

Serial No.25 of the booklet, which relates to Item No.41 of the counter, is an incident of bomb explosion at TV Relay Station dated 22.4.1996. A case has been registered in Mayiladuthurai P.S. Cr.No.595/96 under Section 3 of the Explosive Substances Act and 120-B IPC.

Serial No.26 of the booklet, which relates to Item No.13 of the counter, is a bomb attack on 22.4.1996 in Station Master Room at Peranai Railway Station. A case has been registered under Sections 447, 427, 353 IPC r/w.5(3) of the Explosive Substances Act and Section 151 of the Indian Railways Act.

Serial No.27 of the booklet, which relates to Item No.48 of the counter, is an incident dated 30.11.1996, where Arumugam, stated to be Hindu Front activitist, was murdered as his brother had objected to a provocative speech made by the members of Muslim Community in a public meeting. There is no allegation of any "act of terrorism" and even assuming that it is an act of terrorism, no contraband weapon as envisaged under Section 4(1) of POTA had been used. It is difficult to find the co-relation between this incident and the necessity to issue notification under Section 4(a) of POTA.

Serial No.28 of the booklet relates to Item No.23 of the counter, wherein one Krishnasamy, a Hindu teacher was murdered on 3.2.1997 in retaliation to the murder of Palani Baba, leader of All India Jihad Committee. Conviction is under Section 302 r/w.34 IPC. No apparent connection with terrorism act has been indicated. Moreover, the use of contraband weapon is also not indicated.

Serial No.29 of the booklet corresponding to Item No.35 of the counter relates to incident of attack on a police station on 13.7.1997 and a case was registered under Sections 120-B, 148, 450, 332, 395, 397 r/w.395 and 307 IPC, Sections 4 & 5 of Indian Explosive Substances Act and Section 3(1) of TNPP (D&L) Act, 1992. Matter is pending before the Special Court for Bomb Blast cases, Poonamallee. The accused are suspected to be the members of TNLA.

Serial No.30 of the booklet, which relates to Item No.43 of the counter, relate to incident dated 29.8.1997. This is a case of murder of Jayaprakash, Assistant Jailer, Central Prison at Madurai by accused persons belonging to Al-Umma.

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Nothing is indicated to show it is an act of terrorism. Even otherwise the nature of weapons used are not indicated.

Serial No.31 of the booklet, which relates to Item No.24 of the counter, relate to incident dated 2.9.1997 wherein a Hindu hotel worker was attacked with aruval and knife by accused persons suspected to the members of Al-Umma. Even assuming that an act of terrorism was involved, the weapons aruval and knife are not the weapons contemplated under Section 4(a) of POTA. Therefore this incident could not have been relied upon as a necessity for issuing notification.

Serial No.32 of the booklet is an incident dated 29.11.1997 wherein a Hindu Munnani activist was murdered by three persons suspected to be the members of Al-Umma. They were convicted under Section 302 IPC. However, no details have been furnished indicating any act of terrorism. None of the cases indicated in the counter affidavit seems to have any connection with this incident.

Serial No.33 of the booklet corresponding to Item No.26 of the counter relates to an incident dated 3.12.1997, where the members belonging to Al-Umma had allegedly planted explosive device to avenge the death of 18 Muslims, who were killed during the riots in Coimbatore on 30.11.1997 and 1.12.1997, following the incident of murder of Traffic Police Constable Selvaraj on 29.11.1997. Some of the accused have been convicted under section 302 and Section 3, 4(b) and 6 of the Explosive Substances Act, 1908.

Serial No.34 of the booklet corresponding to Item No.39 of the counter is an incident dated 7.2.1998/8.2.1998 where there was an explosion inside a rice mill. A case was registered under Section 5 of the Explosive Substances Act, 302 IOPC and Sections 3 and 4 r/w.25(1-H) of the Arms Act.

Serial No.35 of the booklet corresponding to Item No.10 of the counter relates to an incident dated 14.2.1998 regarding possession of petrol bombs and deadly weapons. A case was registered under Sections 4 and 5 of the Explosive Substances Act and 17 of the Criminal Law Amendment Act.

Serial No.36 of the booklet corresponding to Item No.1 of the counter relates to incident dated 25.2.1998 in Chennai, wherein there was recovery of a bag containing live bombs. The accused persons are suspected to be the members of Al-Umma. A case was registered under Sections 4 and 5 of the Explosive Substances Act.

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Serial No.37 of the booklet corresponding to Item No.3 of the counter relates to an incident dated 12.3.1998, where a letter bomb addressed to the Deputy Commissioner of Police, Head Quarters, Egmore, Chennai, was seized. A case was registered under Section 5 of the Explosive Substances Act and the case was still under investigation.

Serial No.38 of the booklet corresponding to Item No.2 of the counter affidavit relates to incident dated 28.3.1998 wherein the police seized explosive substances from a house in Chennai. A case was registered under Section 120-B IPC, Section 5 of the Explosive Substances Act r/w.25 of the Arms Act and the case is under trial.

Serial No.39 of the booklet corresponding to Item No.44 of the counter relates to a case of murder in Madurai. Subsequently the accused persons were acquitted under Section 235 Cr.P.C on 11.7.2002. There is nothing to indicate about any act of terrorism.

Serial No.40 of the booklet corresponding to Item No.11 of the counter, relates to an attempt to blast Kathipara Nehru Statue in Chengelpet district. A case weas registered under Section 5(2)(B) of the Explosive Substances Act and 427 IPC. Such case was tried along with Kodaikanal P.S.Cr.No.70/88 (Serial No.4 of the booklet corresponding to Item No.46 of the counter), the incident had occurred about more than 14 years prior to issuance of notification.

Serial No.41 of the booklet corresponding to Item No.33 of the counter affidavit relates to hurling of hand grenades on a police jeep. A case was registered under Sections 1247, 148, 149, 120-B and 307 IPC r/w.4(a) & 6 of the Explosive Substances Act, 1908.

Serial No.42 of the booklet corresponding to Item No.53 of the counter relates to incident dated 28.11.1998, where a member of Hindu Front was murdered by the persons suspected to be the members of Al-Umma. A case was registered under Section 120-B, 147, 148, 341, 302 IPC. The case ended in acquittal in 2003. The allegations do not indicate the use of any contraband weapons as envisaged under Section 4(a) of POTA and there is nothing to indicate about any "act of terrorism".

Serial No. 43 of the booklet corresponding to Item No.30 of the counter affidavit relates to attack on Vellithiruppur police station by Veerappan gang in Erode district. A case was registered under Sections 147, 148, 450,

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395 r/w.397, 427, 412 r/w.149 IPC & Section 25(1-B)(a) of the Arms Act, 1959.

Serial No.44 of the booklet corresponding to Item No.34 of the counter relates to incident dated 2.2.1999 wherein P.V. Sridhar, member of B.J.P was murdered by accused persons suspected to be associated with Al-Umma. A case was registered under Sections 147, 148, 341, 302, 379, 201, 109 & 120-B IPC. The allegations do not indicate about user of any contraband weapon as contemplated under Section 4(a) of POTA. The case ended in conviction in respect of some accused persons in 2003.

Serial No.45 of the booklet corresponding to Item No.54 of the counter relates to an incident dated 3.4.1999 wherein High Power Feeder tower was blasted by using gelatine. A case was registered under Sections 148, 149 IPC, Section 3 of TNPP (D & L) Act, Sections 4 and 5 of the Explosive Substances Act. Accused persons are suspected to be the members of TNLA and the case is pending trial before the designated TADA Court.

Serial No.46 of the booklet corresponding to Item No.7 of the counter affidavit, Serial No.47 of the booklet corresponding to Item No.8 of the counter and Serial No.48 of the booklet corresponding to Item No.9 of the counter relate to various incidents dated 29.5.1999 and 30.5.1999 of bomb planting in various part of Chennai city. Cases are still pending.

Serial No.49 of the booklet corresponding to Item No.22 of the counter relates to incident dated 30.5.1999 of bomb planting in Coimbatore. Such case has been tried along with previous three cases.

Serial No.50 of the booklet corresponding to Item No.32 of the counter is an incident dated 30.5.1999 of bomb planting in Trichy. This case is also tried along with the case of bomb planting in Chennai city.

Serial No.51 of the booklet corresponding to Item No.28 of the counter relates to murder of a Hindu Munanni functionary by accused persons suspected to be the members of Al-Umma. A case was registered under Sections 147, 148, 302 IPC r/w.120-B IPC and four accused persons were convicted. There is nothing to show that any "act of terrorism" was involved and at least the weapons used do not appear to be the weapons as envisaged under Section 4(a) of POTA. The incident had taken place more than 13 years before issuance of the notification.

Serial No.52 of the booklet corresponding to Item No.45 of the counter relates to incident dated 13.3.2000, where

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the accused persons went to Srilanka by a boat and were arrested by Srilankan Navy and being released on bail, returned to Dhanuskodi in a boat and conducted a public meeting in favour of LTTE. A case has been registered under Sections 12(C) of the Passport Act and 13(1)(b), 13(2) of the Unlawful Activities Prevention Act, 1967. The case is pending. There is no allegation of user of any contraband weapons as indicated in Section 4(a) of the POTA.

Serial No.53 of the booklet corresponding to Item No.18 of the counter relates to incident dated 21.3.2000 of bomb blast on a railway track in Cuddalore. A case has been registered under Sections 3 and 4 of the Explosive Substances Act, Section 3 of TNPP(D&L) Act, Section 505(I)(b) & 506(ii) IPC and 151(I) of Indian Railways Act. Some of the accused were convicted in 2003 and others were acquitted.

Serial No.54 of the booklet corresponding to Item No.29 of the counter relates to abduction of the film star Rajkumar by Veerappan gang. A case was registered under Sections 147, 148, 452, 364(A), 366, 368, 202, 212, 414, 120-B & 506(ii) IPC., Section 27(2) of the Explosive Substances Act and Section 2(d) of the Tamil Nadu Forest Act.

32.A bare perusal of the above indicates that many of the cases relate to a period of more than 10 to 12 years prior to issuance of the notification. Many cases of murder of individuals by weapons, such as aruval, etc., have been considered for the purpose of issuing notification. Many of the decade old cases relating to illegal possession of explosive substances have been also considered for the purpose of issuing the notification without application of mind to the fact that possession of such weapons is an offence punishable under Section 4(b), which applies proprio vigore even without any notification. The fact that similar notification had been issued under Section 5 of TADA notifying the entire "State" more than a decade back cannot be an excuse far less a relevant consideration for issuing such Notification under Section 4(a) of POTA in respect of the entire State without keeping in view the distinction between the two provisions and without assessing the ground realities and the change in circumstance. In late eighties and early nineties the "Tamil Eazham Movement" originating in Srilanka was at its peak,but obviously the scenario had changed in December, 2002. The other incidents in the wake of Ayodhya issue in mid nineties were on the decline. At any rate, Section 4(b) of POTA was very much in the field. It is obvious that without considering such relevant aspects and developments, the notification declaring the entire State as notified area was issued in a mechanical manner. Notification

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under Section 4(a) is required to be issued keeping in view the proneness of the area to terrorism so that possession of weapons contemplated in the Arms Rules can be dealt with. Weapons such as bombs, dynamite or hazardous explosive substances or other lethal weapons capable of mass destruction or biological or chemical substances of warfare are as such covered under Section 4(b) for which no notification is required. While considering the question of notifying the entire State, this aspect has been completely lost sight of.

33. Except vaguely indicating 54 incidents in the counter affidavit, without giving any detail as to the nature of the allegations and nature of the weapons used, nothing has been indicated to show the basis of issuing the notification under Section 4(a) notifying the entire State. The materials do not indicate even the prima facie satisfaction that with a view to curb the influx of the contraband arms and ammunitions contemplated in Category I and Category III of Schedule I to the Arms Rules, the entire State was required to be notified. The fact, as conceded by the Special Public Prosecutor in the course of hearing, that under Section 4(a) of POTA, the one and only case of unauthorised possession of arms as against the petitioner is rather indicative of the fact that the notification has been issued in a mechanical manner without any application of mind. It is of course true that the subsequent event of registering cases under Section 4(a) may not be the appropriate criteria for considering the validity of the notification, which was issued in December, 2002. However, the very fact that only a single case has been registered in the entire State of Tamil Nadu under Section 4(a), as conceded by the learned Special Public Prosecutor in the course of hearing, tells its own tale. The submission made to the effect that a similar notification had been issued notifying the entire State under TADA Act hardly adds to the strength of the contention on behalf of the State. At the cost of repetition, it may be stated that under Section 5 read with Section 2(1)(f) of TADA Act, possession of all the arms and ammunitions was an offence only if a notification was issued, whereas, under Section 4(b) of POTA, possession of bombs, dynamite or hazardous explosive substances or other lethal weapons capable of mass destruction or biological or chemical substances of warfare in any part of the country, is already an offence. Since the notification was issued in a mechanical manner without considering the relevant facts and figures, and the circumstances, and apparently on the basis of many irrelevant considerations, we are constrained to quash the notification. In view of such quashing of the notification, it is obvious that the petitioner cannot be prosecuted for the alleged commission of the offence under Section 4(a) of POTA. However, quashing of the notification

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would obviously not stand in the way of prosecuting the petitioner under any other relevant law.

34. With the above observation, the writ petition is accordingly allowed and the impugned G.O.Ms.No.1262, Home (Pol.VII), dated 24.12.2002 is quashed. Consequently, WPMP.No.30578 of 2004 is closed. No costs.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary
   Home Department
   Government of Tamil Nadu
   St. Fort George
   Chennai - 9.

2. The Deputy Superintendent of Police
   Head Quarters
   CBCID
   Chennai.

+3 CC to M/s.N.R.Elango, Advocate, SR. No.29955.

SGR(C.O)
BG/26.07.2005.

W.P.NO.25137 OF 2004

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